

**Proceedings
of the
Thirty-fifth
Ontario Waste Management Conference**

held at

**The Prince Hotel
Toronto, Ontario**

June 12-15, 1988

**Sponsored by the
Ontario Ministry of the Environment**

Copyright Provisions and Restrictions on Copying:

This Ontario Ministry of the Environment work is protected by Crown copyright (unless otherwise indicated), which is held by the Queen's Printer for Ontario. It may be reproduced for non-commercial purposes if credit is given and Crown copyright is acknowledged.

It may not be reproduced, in all or in part, for any commercial purpose except under a licence from the Queen's Printer for Ontario.

For information on reproducing Government of Ontario works, please contact ServiceOntario Publications at copyright@ontario.ca

Abstract of Presentation re Strict Liability - The Due Diligence
Defence in Environmental cases

by
David Crocker, Legal Services
Branch, Environment Ontario

Courts hearing Environmental cases struggled for some time with the difficulty in placing the appropriate onus on the Prosecution concerning proof of the mental element of defendants and particularly defendant corporations.

In 1978 the Supreme Court of Canada handed down its decision in the appeal of a prosecution against the Corporation of the City of Sault Ste. Marie. That decision created, in Canada, the offence of strict liability and gave prospective defendants the opportunity of raising the due diligence defence now common in public welfare legislation.

Courts can now properly determine the significance of the words "cause or permit the discharge" which exist in both the Ontario Water Resources Act and the Environmental Protection Act and can properly assess the degree of control which was exercised and should have been exercised by corporations in order to try and avoid the offence which took place.

The law now clearly requires a defendant in environmental cases to prove that they took all reasonable steps to avoid the pollution, but could not avoid it. By allowing this defence the courts have clearly challenged corporations in Ontario to do everything reasonable to avoid violating environmental legislation and thereby encourage the highest standards of care.

Note: Additional comments and observations may be obtained from the author direct by contacting the Legal Services Branch of the Ontario Ministry of the Environment.



(8274)

TD/897/O68